

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

NUVERRA ENVIRONMENTAL SOLUTIONS, INC  
Employer

and

Case 08-RC-164447

TEAMSTERS LOCAL #348  
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Order Overruling Objection and Certification of Representative is denied as it raises no substantial issues warranting review.<sup>1</sup>

PHILIP A. MISCIMARRA, MEMBER

KENT Y. HIROZAWA, MEMBER

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<sup>1</sup> We agree with the Regional Director's conclusion that, under the test articulated in B & D Plastics, Inc., 302 NLRB 245 (1991), the Employer has not shown that the Petitioner's holiday ham giveaway tended to unlawfully influence the outcome of the election. Although a potentially dispositive number of employees received free hams, the hams were of modest value (\$10-\$12) and the giveaway's purpose, reflected in the announcement in the Petitioner's newsletter, was to extend holiday greetings to the Petitioner's members, their families and friends. The Petitioner informed only one unit employee (and only when that employee inquired) that unit employees were eligible for the giveaway; attending the giveaway and accepting the hams were both entirely voluntary; at no point did the Petitioner link the giveaway to the pending election; and the Petitioner gave hams only to those employees who attended the giveaway. Under these circumstances, none of the unit employees who became aware of their eligibility to receive a ham could have reasonably viewed the giveaway as intended to influence their votes. Although the giveaway took place 5-6 days before the election, we find the giveaway's proximity to the election not dispositive under these circumstances. The Board has declined to set aside elections where a benefit was granted even closer to the election. See, e.g., Chicagoland Television News, Inc., 328 NLRB 367, 367 (1991) (food and drink provided the day before the election); see also Sequel of New Mexico, 361 NLRB No. 127 (2014). Finally, even assuming the giveaway warranted an inference that the free hams were coercive, the Petitioner has rebutted this inference by providing an explanation for the timing of the giveaway unrelated to the election, given the uncontradicted evidence that the giveaway is a yearly event that is open to all current as well as prospective members of the Petitioner.

LAUREN McFERRAN, MEMBER

Dated, Washington, D.C., July 8, 2016.